

charge to the jury by Justice Goff, in which he fairly riddled the theory of the defence. Reading from the evidence on both sides, he clearly showed the irreconcilable points in the stories of the gunmen. He declared the situation was unique in criminal annals in that it presented "the accused accusing the accusers."

If there had been any hope for the gangsters prior to the last words of the court to the jury it appeared to be a foreboding hope after Justice Goff had finished. As the defendants were led from court, when the jury retired, "Lefty" Louie even had the courage to remark that he expected to keep his date with the newspaper men last night, "when the four gunmen had promised to invite 'the crowd' to 'a big feed' in celebration of their acquittal."

Jurors Decline Luncheon.

Justice Goff finished his charge to the jury at 1:30 p. m., and the case was in the hands of the jury five minutes later. The general impression was that they would be out for an hour or two, at least. District Attorney Whitman, with his assistants, Mr. Moss and Mr. Rubin, and Mr. Wahle and his partner, Mr. Krings, started to leave the courtroom for luncheon, following Justice Goff's example, when Captain Lynch, of the court squad, passed the word around that the jury had declined to go out to luncheon, or have it sent in, prior to their deliberations.

"That looks bad," said Mr. Wahle to the newspaper men. "But you don't suppose that a jury is going to convict four boys of murder in such short order, do you?"

The anxiety of counsel for the defence proved fully warranted. But when the jury did not appear within a few minutes the lawyers and practically every one associated with the case ventured to go out for a bite to eat. A few spectators lingered, evidently thinking they would find it difficult to get into the courtroom again through the strong police guard.

At 2:05 p. m. court officers were sent scurrying after Justice Goff with the word that the jury had reached an agreement. The four prisoners had not been taken back to the Tombs, but were detained in the pen in the Criminal Courts Building, on the mezzanine floor above. When Justice Goff took his seat on the bench and the jury filed into the jury box, at 2:35 p. m., the prisoners were immediately sent for, and they came shuffling in along the aisle at the side of the courtroom, accompanied by a troop of deputy sher-

iffs. The gunmen were lined up at the prisoners' bar.

Deep Hush Precedes Verdict.

A deep hush pervaded the courtroom whenever the street noises seemed to subside for the time being. The silence was broken by the shrill voice of Clerk Penny, who called the roll of the jurors. Then he said:

"Please rise, gentlemen. Jurors, look upon the defendants. Defendants, look upon the jurors. Gentlemen of the jury, have you agreed on a verdict?"

Mr. Montgomery, the foreman, bowed and answered clearly:

"We have."

Reading the names of the defendants and their aliases from the indictment, the clerk of the court asked:

"What say you, gentlemen, do you find the defendants guilty or not guilty as charged?"

The foreman leaned slightly forward and in a clear and distinct voice said:

"Guilty of murder in the first degree."

The verdict was rendered at 2:42 p. m., a few minutes over the hour after the jury retired. The words of the foreman fell upon the silence in the courtroom in almost unnatural tones. There was a noticeable tightening of the hands of the four prisoners on the railing in front of them. "Whitey" Lewis, whose blond complexion is none too ruddy at best, turned the color of ashes. His knees seemed to sink under him momentarily, and then he straightened up with a tighter grip on the railing. His eyes had been fastened on the foreman of the jury.

Others Show Little Emotion.

"Lefty" Louie had been looking at the jury, but not a muscle of his face moved when the verdict was rendered. He turned his gaze on his "pals" for a moment, and then looked straight at Justice Goff. "Dago" Frank and "Gyp" the Blood had their heads twisted to the front. "Dago's" mouth twitched a little, but that was the only sign of emotion. "Gyp" reached into his pocket for his handkerchief, with which he brushed his forehead a moment, and then relaxed into a stolid attitude.

The mother and young sister of "Dago" Frank were in the courtroom and they began to sob softly. The spell was broken by Clerk Penny's voice again. The jurors took their seats and he walked over near Mr. Montgomery, inquiring:

"As to each of the defendants? As to all of the defendants?"

Mr. Montgomery, in unison with several other jurors, answered:

"All of them."

"Of murder in the first degree?" asked the clerk.

"Yes," responded the foreman.

Mr. Wahle, the gunmen's counsel, arose and addressed the court, with a grave face. He did not ask that the jurors be polled, as counsel for Charles Becker had done.

"May I reserve my motions for the day fixed for sentence?" he asked the court.

"I will hear them to-morrow morning," said Justice Goff, after conferring with Clerk Penny. "The defendants are remanded until to-morrow morning at 10:30 o'clock."

The handcuffs clicked as they were fastened by the deputies upon the wrists of the prisoners, and the little procession started back through the courtroom. "Gyp," as he was being led away, turned and said something to "Lefty" Louie in a sneering manner.

"Dago" Frank turned toward his counsel and said:

"Come over right away; we want to see you."

Justice Goff left the bench at once and the courtroom was quickly cleared.

Crowd Seeks Glimpse of Men.

A large crowd had collected in Franklin street on either side of the Bridge of Sighs, evidently for the purpose of getting a glimpse of the four prisoners as they were taken back to their cells. The heads of the deputies and the prisoners could be seen from the street as they marched across the mournful covered entrance which connects the court building with the city prison. The police had a scuffle with several men who ventured up on the mezzanine floor where the prisoners had to be taken on their way to the Tombs.

Another crowd of several hundred men and boys had collected on the White street side of the building, where the large green auto "bus" stood at the door waiting for the jurors. The jury, in charge of Captain Tierney, Lieutenant Brady and a score of uniformed men from the Elizabeth street station, with Captain Lynch and the court squad acting as escorts, were taken down the stairs to the basement of the building and out to the waiting automobile.

The crowd pressed so closely that the machine could not be started until the police charged the throng. The machine finally got away and took the jurors to the Murray Hill Hotel, where they have been living during the trial. There they had luncheon, and after collecting their belongings departed for their homes.

No one was allowed to get to the jurors after they rendered their verdict, until they were safely in the auto "bus." The police fairly surrounded them in their short walk through the building. It was learned, however, that after a brief discussion they took one ballot, which resulted in a unanimous vote for murder in the first degree. The verdict was reached in twenty minutes after they entered the jury room, it was said.

As Mr. Wahle was leaving the courtroom he was asked what he thought of the verdict. "What more could we do than make a good fight," he said. "Of course, we will appeal."

Gunmen Want Appeals Rushed.

Counsel for the defence said he did not consider Justice Goff's charge to the jury unfair to his clients. He declared, however, that some of the exceptions taken by the defence, both during the trial and to the court's charge, would furnish good grounds for a reversible error and a new trial. He hurried over to the Tombs to see his clients and conferred with them

an hour. The last thing they said to him, he declared, was a request in concert to "rush our appeals."

Frank Moss, the Assistant District Attorney, who, with Mr. Whitman, tried the case, declared the verdict in his opinion was a just one. He said the one thing that pleased him most was the fact that such a verdict had been courageously rendered by a jury against all four defendants.

"I have been severely criticized for bringing the four defendants to trial together," said Mr. Moss. "A good many of my lawyer friends thought it would be impossible to obtain a verdict against four young defendants at the same time on the evidence which the people had. For sentimental reasons and for the fact that the entire defence would be massed against us, it was pointed out to me, it would be much more difficult to get a verdict of guilty. But the result makes a pretty thorough clean-up of the biggest part of the Rosenthal case."

The deputy assistant District Attorney Mr. Rubin, who assisted in the preparation of the people's case and helped Mr. Moss in court, said the verdict would teach the gangsters a lesson that there was such a thing as prosecution to the end.

Whitman Elated at Convictions.

District Attorney Whitman was highly elated at the result of the trial. He granted an audience to the newspaper men soon after he reached his office, and made the formal statement for publication which appears elsewhere. He was particularly pleased with the conviction of the four gangsters, he declared, because he had learned among the frequenters of the underworld on the East Side, where his investigation had led him since Rosenthal was murdered, that the gangsters always boasted that no gunman had ever gone to the electric chair, despite the many shootings and rows that had occurred. Rose, Weber, Vallon, Schepps and others had told him that that had been the spirit and boast of the East Side gangs, he said.

Mr. Whitman was asked what would become now of the quartet of state witnesses—Rose, Vallon, Weber and Schepps. There had been some difference of opinion as to whether they could be technically held under the agreement in the stipulations on the Rosenthal indictment had been tried and the whole matter disposed of, it was suggested.

"I can't believe that any lawyer who is honest with himself can say that an indictment lives after a conviction is obtained," said the District Attorney. "I have given my word and I am going to let them go. Twenty-four jurors have decided that they told the truth, and that they did not fire any of the shots at Rosenthal. Those were the conditions under which the stipulations were granted, and I believe they have been done to assure the defendants of a fair and just trial. He then reminded them that he was there to interpret the law, and not to decide upon the facts."

"The law defines," he said, "the crime of murder in the first degree. You must take the law as I define it. In exercising your power, care must be observed. Judge each witness according to his or her capacity. That rests with you."

After these customary general instructions the justice took up the case proper. He said:

There is no question here but that Herman Rosenthal was murdered. It is conceded that about 2 a. m. in front of the Metropolitan Hotel, Herman Rosenthal was murdered. The people of the State assert that these four defendants did the shooting. They have given their right names. I shall abbreviate their names so that time may be saved, and you may be able to appreciate the reference to them.

The justice then enumerated the gunmen as they sat from left to right as "Whitey" Lewis, whom he should refer to in his charge as "Whitey"; Frank Crofied, whom he would call Frank; Louis Rosenberg, whom he would call "Lefty"; and Harry Horowitz, whom he would call "Gyp."

Shapiro Will Go Free Also.

Referring to William Shapiro, the chauffeur, who was finally persuaded to "come through" with a convicting identification of the four gunmen as his passengers on the night of the shooting, Mr. Whitman said he soon would move for the dismissal of the indictment against him.

"The only possible case we could have against Shapiro would be based on the fact that he drove the murderers away from the scene of the shooting on the night Rosenthal was killed," said Mr. Whitman. "And if his story is true—and I believe it is—he did that at the point of a revolver, and, I believe, acted in the fear of death. There has been no evidence produced before that to show he was implicated in the shooting."

The verdict in the gunmen's case will undoubtedly offer a substantial barrier to the appeal of Charles Becker. The fact that they were convicted apparently substantiates an important part of the proof in the conspiracy of which the state contended Becker was the master mind. It links Becker closer to the "hands" in the murder plot, as Mr. Moss called the gunmen, if that were possible, in the face of Becker's own conviction. Asked what bearing the verdict might have on the Becker case, Mr. Whitman said:

"It more than justifies the verdict against Becker, and, of course, greatly strengthens the people's case against Becker."

Mr. Whitman paid his adversary, Mr. Wahle, a compliment.

"I think Mr. Wahle tried his case well," said the District Attorney, "and had a better prepared defence than developed at the Becker trial."

The four gunmen are now locked up in adjoining cells on the first tier, "Dago" Frank and "Whitey" occupying one, and "Gyp" and "Lefty" the other.

"I had packed my grips ready to go home, so sure was I of a verdict of acquittal," said "Dago" Frank. "Do you remember hearing Goff say to the jury, 'I left the others to go to see my girl just before they went to the Metropolitan? Why, of course I did. I loved that girl. I picked her up out of the gutter and gave her a home, and put good clothes on her back when she had rags, and took her to my mother. I made her straight and intended to marry her. Why I left the others (the gunmen) when I was having the time of my life down at Far Rockaway, every night, and in the stuffy trains of burning summer nights, went up to our flat. And why wouldn't I leave them that night?"

"Aw, don't talk!" came from the receding form of "Whitey," who was gazing blankly at the solid steel wall before him.

"I will talk!" retorted "Dago" Frank, who stood at the bars of the cell. "I didn't get justice and I want them to know it."

"I worked hard all my life. I was a choir boy in St. Salvatore's Church. I worked in publishing houses and when I got put in Elmhurst I learned a lesson and I never did nothing after that. When I came out I learned marble cutting, and getting rheumatism quit that and became a steam fitter. I worked hard all my life. But those fellows, Rose, Weber, etc., have been gamblers and crooks all their lives, but through their money and influ-

ence managed to keep out of the clutches of the police."

Then the gunmen began to pick the evidence of Rose and the other informers to shreds after their own fashion.

"They're going to commit a worse murder than we were tried for if they send us to the chair," said "Dago" Frank.

Some one suggested there might be hope in a new trial.

"But you need money," said "Dago" Frank. "I haven't a cent."

"I haven't a nickel," said "Whitey."

"And Wahle is a per man," said "Dago" Frank.

The gunmen's trial occupied eight court days. The selecting of the jury began on Friday, November 8. Five jurors were obtained at a short session on the first day. The jury was completed at the next day's session of court. It took the people about three days to put in their case. The defence occupied two days. Monday was given up to the summing up on both sides. Mr. Moss and Mr. Wahle occupied three hours each in their final addresses to the jury. Justice Goff occupied exactly three hours in his charge to the jury yesterday. The half hour deliberations of the jury set a new record for the finding of a verdict in a "big" murder trial.

District Attorney Whitman said last night the actual cost of the case to the county since it started was \$500 a day. This does not include the heavy expense of getting and keeping the witnesses for the people, which will mount to many thousands.

GOFF ISSUES CHARGE REVIEWING MURDER

Points Out Contradictions in Testimony, and Again Declines to Rule Schepps Is Accomplice.

Justice Goff reached the Criminal Courts Building yesterday a few minutes after the jurors in the gunmen's case arrived from the Murray Hill Hotel, where they had spent the night. The court attendant rapped for order at 10:30, and as the justice took his seat the gunmen were led into the room and took their places behind their counsel. In the mean time Mr. Moss, accompanied by Mr. Rubin, Deputy Assistant District Attorney, had entered. The rollcall of jurors came next, and then Justice Goff began his charge to the jury.

The justice called the jurors' attention to the fact that they had been accepted by both sides as fair and impartial men, and that everything had been done to assure the defendants of a fair and just trial. He then reminded them that he was there to interpret the law, and not to decide upon the facts.

"The law defines," he said, "the crime of murder in the first degree. You must take the law as I define it. In exercising your power, care must be observed. Judge each witness according to his or her capacity. That rests with you."

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Court Reviews the Plot.

Next he reviewed the events that started with the meeting in the Café des Beaux-Arts. He spoke of "Lefty" and "Whitey" at that meeting as telling Rose that Zelig held him (Rose) responsible for the "framing up" of Zelig, who was in the Tombs on a charge of carrying concealed weapons. Continuing, the justice told of how Rose, in order to show that he was innocent, wanted to see Zelig released, and of how, according to Rose, Becker had said it was necessary to have Rosenthal "croaked" to prevent the breaking up of gambling in New York. The justice continued:

On the 12th of July the four men went to the Garden Restaurant, according to Rose, where Rosenthal was to "perform the murder at once, but the appearance of a man thought to be a Burns detective frightened them off."

Then came the visit of Rose to the Seventh Avenue house to tell the men that Becker was more and more insistent. On July 14 Rose went to the "Sam" Paul outfit, where the gambling situation was discussed. Later in the day he went to Dora Gilbert's for an affidavit.

On the following night the four defendants and four or five other men were in Weber's poker rooms, at 421 street and Sixth Avenue. Early on the 16th, after Weber had gone out and come back, the four defendants left the room and entered a gray automobile driven by William Shapiro, and went up Sixth Avenue to 42d street and went west and turned around, facing Sixth Avenue.

The defendants then got out and went across the street. Then five shots were fired.

Justice Goff then referred to the identification made by Stanich, Krause, Lu-

ban and Shapiro and told of the meeting of Frank and "Lefty" with Rose at 50th street and Eighth Avenue on the afternoon of the murder and the payment of \$1,000 by Rose to "Lefty." He then outlined the defence, briefly reviewing the testimony of the gunmen themselves.

The Mysterious Stranger.

Speaking of the meeting of the four at Weber's, Justice Goff read from the defence outlining their allegations concerning the trial of "Gyp." "Whitey" and "Lefty" to 42d street and Broadway with the mysterious stranger and the departure of "Dago" Frank for his home. The witnessing of the shooting as told by the three men was then outlined with their subsequent flight to the Seventh Avenue house. Justice Goff then continued:

For fear that these defendants would be connected with the shooting they went to an opium "joint," and later separated and left town. They were later arrested and stayed in the Tombs, but refrained from communicating with friends, for fear that intercepted letters might lead to the detection of their hiding places.

The prosecution—through Rose and other witnesses, but particularly Rose, Weber and Vallon, and to a certain extent Schepps—says to these four defendants, "Herman Rosenthal was murdered, and you are the murderers."

The defendants say: "We admit he was murdered, but you are the murderers," so that the accused accuse the informers of the murder.

You have observed that man as he sat there for hours. You had full opportunity to observe whether he was narrating actions or telling a tale. Taking his own history, his acknowledgment that he was a gambler by profession, he said that he had not taken part in the actual murder, but that he was the agent of Becker, who desired the death of Rosenthal for his own protection. He admitted that he was an agent, and he had secured the men who performed the deed.

Do you believe Rose was the man who actually shot Rosenthal? It is before you that Rose stated he secured the release of Zelig, and had secured his bond to show his good will, and that he was not the one who had "framed up" Zelig. Then it comes back before you to say, hearing his narrative incriminating himself—can you say it was all constructed from his imagination, that you have no truth to support his story?

"Rose Did Not See Shooting."

Bear in mind, gentlemen, that Rose did not say he saw these men shoot Rosenthal. He testified he lay down on a couch in Weber's poker parlors. He did not see the shooting.

Justice Goff then said that what was called speaking evidence was involved, or, in other words, evidence that speaks for itself and seems to be true when it is apparently false. He continued:

It appears in the evidence that three of these defendants left the resort in Second Avenue, and by a direct line of cars went to 42d street, where they met Weber. "Lefty" and "Gyp" noticed that there was a gray automobile in the street opposite Weber's.

They went upstairs, and having started a while left and went downstairs, and each noticed a gray automobile there. Is it of any importance for you to consider that each one of these men testified that he saw that automobile?

It appears that neither of the defendants knew why the gray car was there. You can see if the presence of such a car in that neighborhood was such a mark as to be noticeable.

"Whitey" testified as to what occurred in 42d street: "Ad of a murder, the strange man shoot. I heard the crash of the shot. I did not see the whole scene," Weber, Vallon and Rose were there.

It is for you to say if, in the flash of a pistol shot, which is practically instantaneous, "Whitey" and his friends, forty-five feet away, could see the faces of the four men whom they accuse.

The justice then took up the contention of the defendants that Rose and his companions shot Rosenthal, and asked if it were reasonable or conceivable. He continued:

All four were in harmony in saying that they were fifteen minutes or more in Weber's. You must find it that is the result of keen conception and arrangement. Consider one moment the testimony about the physical facts surrounding the case.

Some of the Physical Facts.

Take the evidence of the waiter, Hecht, who said he saw Rosenthal reading a paper, heard a shot, shrank back, then saw the man fall after he saw three other men standing within five feet of Rosenthal.

Dr. Schultz said that in his opinion the bullets struck from the right, that the bullet wounds were powder marked and that the shots were fired three inches from the head.

If you compare the testimony of the witnesses for the prosecution and for the defence upon this point you will notice a wide discrepancy and contradiction. The testimony of Luban is in no way contradicted.

It is true that Luban was once convicted of a crime and there has been some testimony that he was in his brother's house that night, but you must weigh the evidence and find if he saw the shooting of Herman Rosenthal or not.

Next Krause, the waiter, He was, so far as the evidence goes, a stranger to Rosenthal and the four defendants. He says that "Whitey," "Lefty" and "Gyp" fired at Rosenthal. Is there anything in his testimony that shows he testified falsely against these defendants?

He is from a strange land, a man in humble life. He had nothing to gain in giving false testimony. He declined to make a positive identification of Frank. If he was reckless and unreliable, would he have stopped at the identification of one?

In referring to Crofied's alibi, the justice said an alibi meant a man need not defend himself against a crime if he presented evidence that he was not at the scene of crime. The alibi was complete

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If it excluded all reasonable probability of the defendant being present.

The defence of an alibi was, however, a defence that must be most carefully scrutinized. The justice continued:

According to the testimony of Frank, he said, "I thought I would go home, as I had not seen Jean Gordon for two days. So I went home because I was afraid Jean would think I was 'boozing.'"

"Gyp" testified that Frank said: "You say you are going to see those two 'cops.' As a matter of fact, you will be 'boozing' all night. I am going home and see Jean."

"Whitey" says Frank said: "Boys, I am going home; I haven't seen Jean for days."

"Lefty" said Frank said: "I haven't seen Jean for days, and she will be worried, and I am going home." That is their testimony.

Frank said he left the Seventh Avenue house for the express purpose of meeting with the other defendants.

Justice Goff read the definitions of murder, and said that every person concerned in the death of Herman Rosenthal, whether absent or present, was guilty of murder.

Principals and Accessories.

He said that any person who assisted in the procuring of the killing was a principal in the crime, as much as were those who actually committed it. He continued:

Rose admits that he arranged the Rosenthal murder. He was not there, but nevertheless he must be regarded as an accomplice.

Our law provides that no one can be convicted on the testimony of an accomplice unless corroborated by the testimony of non-accessories.

The law leaves it entirely with the jury to decide whether the testimony of a witness tends to connect him with the crime, therefore, if Rose's testimony stood alone it would not be admissible. While the law provides that the testimony of an accomplice shall be corroborated it does not say his testimony shall not be believed.

I rule that Vallon is an accomplice. I rule that Weber is an accomplice. I will not rule that Schepps was an accomplice. There is no evidence that Schepps was an actual participant in the commission of the crime.

He may have been an accessory after the fact, but that does not constitute him a principal in the execution of the crime. I leave the question as to whether Schepps was an accomplice or not for you to answer.

"If you find the defendants guilty of killing Rosenthal then you may find them guilty of homicide in any of the four degrees," Justice Goff added. "You must not decide in which degree they are guilty either capriciously or from a desire to be merciful. It is a juror's duty to find a verdict in accordance with the evidence. The juror who finds a verdict not in accordance with the evidence does violence to his conscience."

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